DOCUMENT RESUME

ED 088 441 IR 000 271

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TITLE	Anatomy of a Government Document: The Cabinet Committee Report on Cable Communications.
INSTITUTION	Aspen Inst. for Humanistic Studies, Palo Alto, Calif. Program on Communications and Society.
PUB DATE	13 Feb 74
NOTE	14p.
EDRS PRICE	MF-$0.75 HC-$1.50
DESCRIPTORS	*Cable Television; Conference Reports; *Economic Factors; Government Publications; *Government Role; Political Issues; *Programing (Broadcast); *Public Policy; Public Television
IDENTIFIERS	CATV

ABSTRACT

Excerpts are presented from comments made by the participants at a seminar held to discuss the Report of the Cabinet Committee on Cable Communications. The report was considered in the following three lights: 1) as a political document which seeks to strike a balance of interests to permit cable television (CATV) to survive in a system heavily determined by legislative and regulatory decisions; 2) as an economic document designed to stimulate interest in an industry requiring heavy capital outlays; and 3) as a visionary document which excites the public's imagination and attracts new entrepreneurs. The comments are clustered around the following foci: 1) an overall assessment of the report; 2) the separation of cable ownership from program control; 3) the regulation of CATV; 4) economic incentives; 5) programing; and 6) steps to be taken. A list of conference participants is appended. (PB)

Aspen
Program on Communications and Society

Douglass Cater
Director

February 13, 1974

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ANATOMY OF A GOVERNMENT DOCUMENT:

THE CABINET COMMITTEE REPORT ON CABLE COMMUNICATIONS

Douglass Cater

On first hearing rumors of Clay T. Whitehead's pending departure from government, we wrote him and asked two questions: One, was there any way to prod loose the long awaited study by the Cabinet Committee on Cable Communications which he chaired? Two, could the Aspen Program help assure the Report of serious critical review? Dr. Whitehead was responsive. After a struggle with balky forces in the White House, he managed to get the Report released and just prior to publication, the Aspen Program sponsored a day-long conference at the Brookings Institution in Washington, DC bringing together 85 participants who have reason to be interested in cable's future.

Such an enterprise was not without critics: some broadcasters were darkly suspicious that we were playing into the hands of the cable industry; a few journalists showed jealousy that we might be usurping a review function traditionally left to the press. We remain convinced that important studies deserve more than cursory review and fleeting headlines. The variety and caliber of those joining this first searching examination of the Cable Report (see attached list) should dispel any notion of bias. We hope that the experience will set a precedent for unveiling major studies of complex issues--whether by government or private agencies. Further, we intend this critique to be the beginning not the end of a policy process which will help shape the future of our communications system. A wide diversity of interests and perspectives must be involved. To encourage this is one of the basic goals of the Aspen Institute's Program on Communications and Society.

During these deliberations, it became clear the Whitehead Report must be read in several ways:

--As a political document: does it strike a balance of interests to permit cable to survive and evolve in a system heavily determined by legislative and regulatory decisions?
--As an economic document: will it stimulate investment in an industry which requires heavy capital investment?
--As a visionary document: can it help set goals for communications which will excite the public's imagination and attract new entrepreneurs to demonstrate its potential?

The Report shows an effort at political balance by pointing to a longer-term future for the cable which would offer inducements to almost everyone. It recommends that when fifty percent of the nation's homes are wired, the cable should be largely freed from federal regulation. Cable operators would become common carriers for most channels, while still permitted to retain program control over one or two. A new revenue base would be encouraged

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by eliminating FCC restrictions on pay programming, but major sports would still be preserved for "free" TV. Barriers against cross-ownership would be removed for broadcasters and publishers though not for Ma Bell. Clearly, the intent was to design a pattern of compromises that would overcome political resistance.

Recognizing that the economics of cable growth will be shaped by shorter-term considerations, the Report recommends partial relaxation of controls during the interim before half the nation is wired. At the same time, it urges that copyright laws be revised to protect the interests of present broadcast programming.

Does all this constitute a saleable political and economic package? The first consensus of the meeting at Brookings suggested that it is at least a useful beginning on which to stage public debate and legislative hearings. Yet excerpts from the dialogue reveal numerous caveats--so numerous, in fact, that one supporter felt obliged to warn that the Report must be considered as an integral document--"as a game plan, if you will, for seeking legislation."

No one can be certain whether this Report will survive the pull and tug of the legislative process. That will depend largely on its success as a visionary document. Not many are likely to rally behind the new technologies simply for political or short-term economic benefits. Indeed, unless there is a larger vision, the cable might well become the SST of communications--a technology discarded because it fails to prove its social worth.

Entrepreneurs must be attracted; larger publics must be excited; new programs and services must be offered. The cable will not survive by simply multiplying what already exists. It must demonstrate a capacity for education, health, the humanities and arts, and other benefits not adequately met by the present telecommunications system. To accomplish this will require even greater investments in software than in hardware.

As a first step, the dialogue begun at the Aspen Conference at Brookings must continue and the issues exposed at the meeting, as well as fundamental concerns felt by the broadcasters, must be fully ventilated.

EXCERPTS FROM THE DIALOGUE

I. OVERALL ASSESSMENT

The question that I think has to be debated in this country is: Which way are we going to go with the future of our electronic media? Are we going to extend the system of broadcast regulation where the government has a heavy hand in manipulating what will or will not go on? Or, are we to adopt instead the model of the First Amendment which we have kept intact, more or less, for our print media? Which is to say, we will, through effective economic regulation, remove private economic barriers to the use of the media for distributing messages throughout our society and we will abstain from governmental control of what goes out over that media. ...A lot of people feel some very good purposes can be served by the government manipulating the content of our media. A lot of people feel the other way. I think it is crystal clear from the Report that we come down on the side of an unfettered First Amendment, a literal interpretation of the First Amendment and [the] minimal necessary fooling around with compromise. I think that this society can stand freedom in what it sees and hears. I think if we are to stay true to our traditions we have to make that choice. But whether we make the choice the Cabinet Committee lays out or whether we make another choice, we should at least do it consciously and decide how this great potential of cable television, indeed cable communications, is going to be brought into our society and our economy.

- Clay T. Whitehead
  Director, Office of Telecommunications Policy
  Chairman, Cabinet Committee on Cable Communications

This is an outstanding public document. The Cabinet Committee has made a major contribution in formulating guidelines which hopefully the country will pay attention to. ...The Report is important because it recognizes that this is a whole new technology of communication, that if we set out deliberately to do so, it can become a major mode of discussion and exchange of ideas in a free society.

- Ithiel de Sola Pool
  Professor of Political Science
  Massachusetts Institute of Technology

We've been given a framework which is internally consistent, that has only those exceptions in it that are deemed necessary or desirable to keep all of us rocking along on the same boat, and I think it's important to move the whole ship along towards an end port.

- Robin Homet
  Attorney

Can we build a cable system that can achieve universal penetration, that can achieve the delivery of services, that can do it in an economical fashion, that can assure the American people that these services will actually be developed? If we look at the question of cable television in this sense, the American people have got to vote it up or vote it down. I think that this Report has gone a long way towards opening up the principles in which a vote of that sort can be taken.

- Stephen Rivkin
  Attorney

I am troubled by the assumption that all you need to do is unleash cable and you're going to get all the wonders people talk about. ...I have a continued suspicion that a lot of people in the cable business would be quite happy if they can find the magic formula for getting to 40-50% penetration and provide only broadcast signals, sports, and recent movies for pay.

- Kenneth Cox
Former FCC Commissioner

There is no official comment at this time. ...Just off the cuff, it's a mixed bag for broadcasters at this point. Perhaps it is a first step in defining what all the interested parties are going to have to live with. To that extent, we welcome it as a first step. I think we all want to know what we have to live with in terms of regulation in the years to come.

- James Popham
National Association of Broadcasters

I think the document tries to say something that it might have said much briefer. It tries to state policy and it only gets into trouble when it moves into the area of what perhaps would be more properly called rule-making and the details of how the policy is to be applied.

- Thomas Moore
President, Tomorrow Entertainment

I urge that everyone view the Report...as a game plan, if you will, for seeking legislation. When you look at it that way, I think some of the details...may be seen in a different light. For example...the cross-ownership provision has to be looked at next to the separation provision. ...There are a lot of people who feel very strongly about a lot of different positions, and if anything is going to come out of it [cable], what is needed is a document that has intellectual clarity, to be sure, but also has a realistic assessment of what everybody wants the most. ...It seems to me the object is to give each of the groups--the broadcasters, the cable people, the public broadcasting people, those who are blessed with mass tastes--that particular thing that they most want. I think the Report makes a good run at that. I don't agree with everything in it. Frankly, if I agreed with everything in it, I'd be very much worried about it. ...Above all else, this is an integral document.

- Antonin Scalia
Former General Counsel
Office of Telecommunications Policy

II. SEPARATING CABLE OWNERSHIP AND PROGRAM CONTROL

I...am quite sympathetic to the basic policy of separations that the Committee recommends, although I...have some caveats.... I think it's particularly important that this idea, this notion of separating content generation from distribution, be brought to the forefront of public attention and public discussion.... While I'm sympathetic with the separations policy generally, it seems to me, the Committee gives much of the game away in Footnote 2 of Chapter 3 when it talks about giving the cable operator control of one or two cable channels for his own

programming. ...Even if one or two channels is only a small percentage of the total capacity that we envisage for cable systems, still the operator's control of those two channels does open up the same kinds of abuses and potential for monopoly profits that the separations policy is supposed to prevent. I think that is an unnecessary addition that is in this Report probably to give some solace to the cable industry.

- Walter Baer
Rand Corporation

I think that the Report is right on separations and is correct that the less Federal regulation the better, and that you ought to do more by grassroots. ...On the separations issue, the FCC does allow the cable operator today to originate, but the reason why...is because if he doesn't bring the home games of the [New York] Knicks or others, who will? It [the FCC] very much wants to get cable penetration, so it's allowed it [origination] during the transition period, which is the same principle that the Cabinet Report followed. ...I agree...that it's very important that eventually the cable operator get out of programming. As the Report points out, you get all kinds of abuses, and the possibility of abuses. He [the cable operator] may--when you get to the leased channels--do certain things to protect his own channels. That's a very sound principle for the future. I agree...that Footnote 2 compromises that principle and just takes it all away. I find it an astonishing footnote--to say that the cable operator sometime in the future, not now but sometime in the future, can still keep two channels to operate on.

- Henry Geller
Former Special Assistant for
Planning, FCC

I regard the separations issue as one of considerable importance and one that I personally approve of. I'm uncertain as to the effect of the concession. Wally [Baer] and Henry [Geller] are right that it [the concession] seems to give away the game right at the start. On the other hand, the practical arguments as to how one makes the transition without it, given the clear absence across the country now of a great deal of involvement or entrepreneurial interest in those channels..., makes one think that maybe the concession, the granting of separate channels to the operators..., might be part of the transition which fades away completely when maturity is reached, whenever that is.

- Bowman Cutter
Executive Director, Cable
Television Information Center

If it were not for Footnote 2 in the separations section of the document, the Report would have been met with a combination of wailing, gnashing of teeth, and hysterical laughter by the cable television industry. ...On the other hand, I think there's been an honest attempt to get at the separations problem. I think it's a little bit premature, however. I can't see any evidence out there for any need for this kind of policy, other than just simply on philosophical grounds, speculation as to what might happen in the future. Certainly we've had so precious little experience with leased channels in the last eighteen months that I don't think any of us can talk about how that is going to work out.

I think it would be our view right now that we can rely on the abundance of channels and some sort of policy that would insure free and open access to that abundance, rather than limiting the cable operator to any specific quantity of that abundance. I think that will work itself out simply because of the technology of the cable.

- David Foster
President, National Cable Television Association

III. REGULATING THE CABLE

I'd like to touch on the question of the Federal-state-local regulatory issue. I don't think that enough thought has been given to that [issue] and enough practical, hard thinking with respect to the local franchising authority's control, currently and in the future, over the cable industry. It [the Cabinet Committee] decided, as I see it..., that the Federal government should in effect keep hands off, and between the state and the local franchising authority, the situation would be well in hand. I would take exception. Our experience so far would indicate that that is not the case. ...It is my view that municipalities, based upon past performances, are not those that can be left with the main thrust of that local regulatory issue. Then, of course, the states will and have begun to come to this for many reasons. In some cases they started out being very broadly based on their interest in the development of cable, and as the pressure groups moved against them, they've become more narrow in their view and focus. And from the cable industry's view, if they were to be the group that had a dominant voice in the development of cable, it would mean that we would be dealing with fifty different regulatory bodies of some substance for our future. And that, I assure you, is a very, very tough road for us to go down in the face of what we've been dealing with in the past and in the light of the prospect of our getting 50% penetration within...ten to possibly fifteen years. The Federal government provides with all its faults---and we know them well and have had to deal with them for a long time--but with all of that, they provide a single source for difficulties, for help, for consultation, and for action. Speaking very subjectively...the continuation of the FCC's authority and assistance and help in this area is vital and I don't think given enough weight in the Report.

- Al Stern
Chairman of the Board,
Warner Cable Corporation

As a more recent member of the FCC, I have full sympathy with the goal of getting the government out of the regulation of cable. On the other hand, there are some very substantial problems that remain in terms of cross-ownership. ...You can't have it simply one way or the other. There does have to be some substantial regulation during this period of transition.

- Rex Lee
Former FCC Commissioner

IV. ECONOMIC INCENTIVES

The economic questions boil down to how fast cable grows during the transition period. It is absolutely essential that cable grow as rapidly as it should in a free market environment without artifical restraints. The single most important ingredient is pay cable.

- Bruce Owen
Professor of Economics,
Stanford University

A missing question on the agenda is: Should investment in cable be made by public or by private funds? ...It may be a serious error in public judgment in not investing the initial capital in public funds and then permitting venture capital to experiment with the development of software. This is where the real opportunity for diversity lies.

- Anne Branscomb
Attorney

I come as a broadcaster who early in the '50's was intrigued with cable and have been pursuing it ever since, somewhat to the dismay of some of my friends in the broadcasting industry. ...Basically, I don't think we should be too worried about who's owning [cable] but that they have enough money, or have access to enough money, to develop all of these services and do it in the right way. I think in the final analysis, as in broadcasting, I'm a great believer in the marketplace making the decisions.... I'm hopeful that this Report will serve as a means of discussion. We're still going to have all the emotion that we've had before, but there are enough solid points in this Report to serve as discussion points and give us a chance to talk of a solid future. We're not concerned in our company about the competition of cable from the broadcasting standpoint. We're interested in seeing a new service to the public developed and we think cable provides a new service.

- Leonard Reinsch
President, Cox Broadcasting

This Report is probably one of the most bullish things to happen to cable in years. I think, unlike some others, that this is not a bad time to have produced it. The things that make this program extremely bullish are: We now have a form of presidential jawboning, as it were, that says this industry may hook up as much as 50% of the homes in this country. That's incredible.... This business of not compelling divestiture, not breaking up existing cross-ownerships between cable and broadcasting is terrific. ...I think one of the most bullish features of this Report is that we now have a promise or at least a real prospect that there's going to be money poured into a demonstration effort to see if this thing will work.

- Sol Schildhaus
Former FCC Cable Bureau Director

The Report doesn't distinguish sufficiently between cable television as it exists today and the kind of an enterprise that will exist when it reaches this 50% national saturation level at which the new policies are to go into effect. Unlike what the Report says, I believe that cable is today really a cottage industry. It's small; it's undercapitalized; it doesn't have effective research and development programs going; it certainly is politically not as powerful as its opponents. But at the 50% national saturation level, just to use some simple arithmetic, cable would be a very different enterprise altogether. It would have revenues of perhaps three to four billion dollars, assets of perhaps eight to ten billion dollars. It would be roughly as large as the entire broadcast

industry is today. That would make it a very different kind of animal. In fact, the principal problem that I see is in what the Report calls the transition period. That is, how do we get from here to there? I'm afraid the Report does not go into this to the extent that I think is necessary so that [one can] see that there is a reasonable progression.

- Walter Baer
Rand Corporation

V. PROGRAM CLAIMS ON THE CABLE

There are ambivalences in the system in terms of the capabilities of the cities to carry out their functions versus the capabilities of industry to represent their interests. I like the fact that in the Report there was a statement on the issue of minority ownership and the issue that the choices of the poor should be preserved just as much as the choices for anyone else in society in terms of services, in terms of being able to go into the marketplace. But there are ambivalences. And I think that these are issues that have to be resolved in the framework of discussion, debate, and legislative proposals.

- Charles Tate
Executive Director, Cable
Communications Resources Center

We were a little disappointed naturally...in the Report in terms of its lack of any detailed reference to public broadcasting. We're kind of used to that over the years, not only from the government but from others. Nonetheless, I'd like to point out that there exists across this country some 235 public television outlets, many of whom have very sophisticated expertise, production facilities, some of these having very proficient, qualified ...people. Most of this is underutilized. The opportunities to put together [this] excellent Report...in some sort of a joint arrangement through the facilities of public broadcasting, locally if you will, exists. ...The facilities to which I refer are there. ...They are not there for entertainment. They are there for enlightenment. Use them.

- Donald Taverner
President and General Manager, WETA

I happen to believe a great deal of the educational community could use cable to a very good advantage, but they're not going to until they get some encouragement in financing. Local school districts, local institutions, even most of the universities and colleges are simply not equipped financially to move into this area positively without some form of assistance.

- Rex Lee
Former FCC Commissioner

Our goal is to guarantee diversity. The problem is not the availability of air time. The problem is there's no way to pay for it.

- John Goberman
Lincoln Center for the Performing Arts

Most cities would like not to concern themselves with cable because it really is fairly low down on their list of priorities. But it is actually the kind of a problem that rises up and smacks them in the face when they least expect it.

- Herbert Dordick
Telecommunications Management Corp.

VI. THE NEXT STEPS

The transitory nature...of long range documents is best illustrated in this Report in which only two members of the Committee are still in government today. ...Before Douglass Cater and I fell from political power, we operated under the aegis of a man who dealt in long range policy, would accept it, but he would always hasten to add at the end of the discussion: "That's all well and fine, but what do I do at 9 o'clock tomorrow morning because decisions need to be made." I'm of the impression that there are some 9 a.m. decisions that have to be made, and in the absence of any viable, durable, and packaged formula for the future, someone has to make them because the opening up of cable is the essential element of what we're talking about--without injuring or without collapsing other forms of communication which are vital in this country. I bring up some 9 a.m. decisions. Number one is copyright. It's a bone in the throat of both the programmers and the cable operators. It has to be solved. It has to be solved now. If that bill doesn't come out of the Senate by May or June, it is gone for this session. And it would have to start all over again in the next Congress, the 94th Congress. That's a fact of life. It's a 9 a.m. decision. ...It has to be decided because unless it is done, there's a blight on cable and that blight will not be removed until copyright is established. ...The second [9 a.m. decision] is restrictions on programming. There is no doubt in the minds of anyone who has given this more than cursory study that unless these restrictions, these artificial restrictions, are removed, there can be no cable. ...So what are we talking about? A 9 a.m. decision is: How do we encourage the growth of cable so that families in America can have an option as to what they want to view? ...The restrictions on programming simply have to be removed.

- Jack Valenti
President, Motion Picture
Association of America

I'd like to put this one on the 9 a.m. decision list--it may have to go until 10:30--legislation needed to revise and update the 1934 Communications Act, which is the basis for this whole problem. ...We can fool around with copyright laws, we can fool around with public access, we can fool around with pay television, but we are living under a 1934 Communications Act which never envisioned television, never envisioned cable television.... I think until we come to grips with that problem, we're going to patch-work the whole thing.

- Donald Taverner
President and General Manager, WETA

One of the 9 a.m. agenda items I'd like to add is: How do we create a demonstration project that is sufficiently diverse in its services and of sufficient magnitude to reach a critical mass that really will prove something? This is the area where we're floundering--the demonstration of the uses of the new technologies.

- Douglass Cater
Director, Aspen Institute Program
on Communications and Society

Paul Kagan about three years ago described the process that we're all interested in as one of essentially trying to regulate or induce an industry into being. ...We lawyers like to use fancy phrases, and one of the ways that administrative agency law is described is "ambulatory law." It ambles along with events. In at least one point in the Report it seemed to suggest that what the Cabinet Committee was going to suggest was preambulatory law. I hope it will go a little farther than that. I think a great deal of thought does have to be given to the formulation of legislation that will actually create the framework under which various points of view, various interests, can be reconciled, and we can move towards an effective industry subject to an effective and fully understood and coherent system of regulation and incentives. I do not think it is enough to wait for abuses to develop and to try and fashion remedies at that point.

- Robin Homet
Attorney

I don't think the public really yet understands what the choices are or the implications of moving massively in one direction or another. I think this Report will help certainly to set the stage for that debate. And, while I agree with Jack [Valenti] that there are a number of things that have to be decided tomorrow at 9, there are other things that we'd better decide fairly mindfully during the public debate. One of those issues is what is to come from the public sector to get more mileage out of the public investment that we're putting into education, into cultural affairs, into science, into a whole variety of institutions that are in deep trouble in this country. How do these institutions look in relationship to what the cable might do if there were substantially large funds flowing in this area, including public funds?

- Joseph Slater
President, Aspen Institute
for Humanistic Studies

I am very much in sympathy with Jack Valenti's comment about 9 a.m. action. I don't want to sound a note of undue urgency. We do have some time before this industry reaches the maturity that I think we all foresee. But on the other hand, as we keep our eye on the...future, there are some actions we have to take today. We should be mindful where we want to be at the close of the day, at 5 o'clock.... I would hope that the role of this Report will be to provoke, first of all, debate and discussion about where we want to be at the end of the day, and secondly, what kinds of steps we have to take at 9 o'clock and 10 o'clock in order to be able to get there.

- Clay T. Whitehead
Director, Office of Telecommunications Policy
Chairman, Cabinet Committee on Cable Communications

ASPEN INSTITUTE

PROGRAM ON COMMUNICATIONS AND SOCIETY

CONFERENCE ON CABINET COMMITTEE
REPORT ON CABLE COMMUNICATIONS

January 16, 1974 - Washington, D. C.

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